

THE HONORABLE JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SCOTT AND KATHRYN KASEBURG, *et al*,

Plaintiffs,

v.

PORT OF SEATTLE, a municipal corporation; PUGET SOUND ENERGY, INC., a Washington for profit corporation and KING COUNTY, a home rule charter county, and CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a municipal corporation,

Defendants.

NO. 14-cv-00784-JCC

DECLARATION OF RANDALL THOMSEN  
IN SUPPORT OF KING COUNTY AND  
THE PORT'S OPPOSITION TO  
PLAINTIFFS' MOTION FOR SUMMARY  
JUDGMENT

**NOTED ON MOTION CALENDAR:  
Friday, September 18, 2015**

AND

AND CROSS-MOTION FOR SUMMARY  
JUDGMENT

**NOTED ON MOTION CALENDAR:  
Friday, October 9, 2015**

**ORAL ARGUMENT REQUESTED**

I, Randall Thomsen, declare as follows:

1. I am one of the attorneys for the defendant Port of Seattle in the above captioned action, am over age 18, and competent to be a witness. I am making this declaration based on facts within my own personal knowledge and in support of "King County and the Port's

1 Opposition to Plaintiffs' Motion for Summary Judgment and Cross-Motion For Summary  
2 Judgment."

3 2. Attached as **Exhibit 1** to my declaration is a true and correct copy of a chart that  
4 summarizes information about each of the 58 named plaintiffs who are parties to plaintiffs'  
5 motion for summary judgment. The columns of the chart provide the following information for  
6 each of the above-described plaintiffs:

7 3<sup>rd</sup> Am. Compl. Ex. No.: Plaintiffs appended exhibits to their Third Amended  
8 Complaint (Dkt. No. 83). Plaintiffs pled that each exhibit was "the current deed  
9 evidencing ownership of" the subject property for each plaintiff. *See, e.g.,* Third  
10 Amended Complaint ¶ 11. This column identifies the exhibit number for each plaintiff.

11 Plaintiffs' Names: This column identifies each plaintiff.

12 Property Address: This column identifies the physical address of the subject  
13 property.

14 Railroad Conveyance Per Plaintiffs: This column identifies which one of the two  
15 conveyances at issue the plaintiffs identify as being the "source" conveyance related to  
16 the subject property. For purposes of this declaration, I have assumed that the plaintiffs'  
17 characterization is correct and accurate.

18 Date of Acquisition: This column identifies the date the plaintiff acquired his or  
19 her interest in their subject property as stated in the exhibit.

20 Party or Property Involved in *Haggart* or *Smith v. U.S.*: This column identifies  
21 whether the subject property was involved in the *Haggart v. United States* lawsuit or the  
22 *Smith v. United States* lawsuit. The information in this column is based on Exhibits 2  
23 and 5 to this declaration.

1           Amount of Settlement in *Haggart* or *Smith*: This column identifies the amount  
 2 received as compensation for the subject property in either *Haggart* or *Smith*. The  
 3 information in this column is based on Exhibits 2 through 7 to this declaration.

4           Deed Exclude or Not Encompass Railroad Right of Way: This column identifies  
 5 whether the property description in the deeds attached by the plaintiffs as exhibits to  
 6 their Third Amended Complaint contain language that expressly excludes the railroad  
 7 right of way or the property description does not encompass the railroad right of way.

8           Deed "Subject to" Easement(s): This column identifies whether the deeds  
 9 attached by the plaintiffs to their Third Amended Complaint contain language that makes  
 10 the property interest they received by way of the deed "subject to" easements generally  
 11 or as otherwise identified with specificity in the deeds.

12           Other: This column identifies plaintiffs who were parties to the *Ioppolo, et al. v.*  
 13 *Port of Seattle, et al.* lawsuit, plaintiffs who were parties to the *Ao v. Port of Seattle*  
 14 lawsuit, and deeds with reservations in the grant in favor of the State of Washington for  
 15 subsurface rights. The information related to *Ioppolo* is based on Exhibit 8 to this  
 16 declaration. The information related to *Zhou* is based on Exhibits 10 and 11 to this  
 17 declaration. The remaining information is based on the exhibits attached by plaintiffs to  
 18 their Third Amended Complaint.

19           3. Attached as **Exhibit 2** to my declaration is a true and correct copy of the Joint  
 20 Compromise Settlement Agreement Between Plaintiffs and the United States filed on February  
 21 12, 2014, in *Haggart, et al. v. United States*, U.S. Court of Federal Claims, Case No. 09-103L.  
 22 Attachment B to that filing identifies plaintiffs involved in that lawsuit and the settlement  
 23 amount for each. Attached as **Exhibits 3 and 4** to my declaration are true and correct copies of  
 24 the May 21, 2014 Order on the parties' Joint Motion for Approval of Settlement and the  
 25 resulting Judgment in the *Haggart* case.

4. Attached as **Exhibit 5** to my declaration is a true and correct copy of the Second Amended Complaint filed on February 27, 2015, in *Smith, et al. v. United States*, U.S. Court of Federal Claims, Case No. 1:14-v-0387L. Attached as **Exhibit 6** to my declaration is a true and correct copy of a September 1, 2015 Joint Status Report in *Smith*. Attached as **Exhibit 7** to my declaration is a true and correct copy of a September 2, 2015 Order in *Smith*.

5. Attached as **Exhibit 8** to my declaration is a true and correct copy of the Complaint filed on March 10, 2015, in *Ioppolo, et al. v. Port of Seattle, et al.*, United States District Court for the Western District of Washington, Case No. 2:15-cv-358. Attached as **Exhibit 9** to my declaration is a true and correct copy of this Court's September 11, 2015 Order Granting Defendant King County's Motion for Partial Summary Judgment in *Ioppolo*.

6. Attached as **Exhibit 10** to my declaration is a true and correct copy of the Amended Complaint for Declaratory Judgment, Quiet Title and Injunction filed on February 10, 2011, in *Ao, et al. v. Port of Seattle*, Superior Court for the State of Washington, King County, Case No. 09-2-44773-0. Attached as **Exhibit 11** to my declaration is a true and correct copy of the April 22, 2011 Order Granting Defendant Port of Seattle's Motion to Dismiss Pursuant to CR 12(b)(1) in *Ao*.

7. Attached as **Exhibit 12** to my declaration are true and correct copies of documents produced by defendant Port of Seattle in response to plaintiffs' discovery in this case, consisting of documents entitled "Right of Way Easement," "Electric Line Crossing Permit," "Electric Line License (Longitudinal)," "Irrigation Canal, Drainage Canal, Water Pipe or Sewer Pipe Permit," "Private Road Crossing Permit," "Wire Line Crossing Permit," "Pipeline" agreements, "Pipeline Permit," and "Underground Wire Line Crossing Permit," as well as other agreements, in which BNSF and its predecessors are identified as a signatory and with the date range of July 1, 1912, to February 14, 1996.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 14<sup>th</sup> day of September, 2015, in Seattle, Washington.

Roll Moore

# Randall Thomsen

**CERTIFICATE OF SERVICE**

I hereby certify that on September 14, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 14<sup>th</sup> day of September, 2014.

s/Susie Clifford